

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1645 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH SHANKARJI NAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR NB TIWARI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. District Magistrate, Banaskantha at Palanpur, passed an order on December 14, 1999 in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner Jagdishkumar Shankerji Nai, under the

provisions of the PASA Act.

#. The petitioner was branded as "bootlegger". The detaining authority considered the possibility of resorting to less drastic remedies including the remedy of resorting to externment proceedings under section 57 of the Bombay Police Act. The authority also observed that the petitioner is required to be immediately prevented from pursuing his activities and therefore, the detention under the PASA Act is the only remedy that can be resorted to in order to achieve his goal.

#. The detenie has challenged the order of detention on various grounds. However, Mr. Tiwari, learned advocate appearing for the petitioner restricted her arguments to the ground that the detaining authority has taken into consideration the possibility of resorting to externment proceedings under section 57 of the Bombay Police Act where two convictions are required. In the instant case, there is only one case registered against the detenie which is pending investigation. She therefore urged that there was non application of mind on the part of the detaining authority in considering the extraneous and irrelevant material while passing the order of detention and, therefore, petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, it may be noted that the petitioner has not been convicted in any offence. In one single offence against the petitioner and that case is pending investigation. There is no allegation that the petitioner-detenue was earlier convicted. As such, this could not have been considered by the detaining authority. The order of detention can not be supported also for the reason that the detaining authority has taken into consideration the possibility of resorting to proceedings under section 57 of the Bombay Police Act and there are only two offences registered against the detenie, one of which is pending trial and the other is pending investigation. There is no allegation that there were earlier convictions of the detenie. Under the circumstances, in the absence of any convictions, there was no question of considering the possibility of resorting to proceedings under section 57 of the Bombay Police Act. Consideration of this provision by the detaining authority indicates that the detaining authority considered irrelevant and extraneous material reflecting non-application of mind which would vitiate the order of detention. In this regard, the

decision in the case of Bhupatbhai R. Vasava v. District Magistrate, Bharuch, 1992 (2) GLH 350 can be profitably be used.

#. In view of the above-stated reasons, the petition deserves to be allowed. The petition is allowed. The impugned order of detention dated December 14, 1999 is hereby quashed and set aside. The detenue Jagdishkumar Shankarji Nai, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-